

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

In the Matter Of:)
Marjol Battery Site)
Throop, Lackawanna County,)
Pennsylvania)
Gould Inc.)
Respondent) Docket No. III-88-26-DC
Proceeding under Section 106(a))
of the Comprehensive Environmental)
Response, Compensation, and)
Liability Act of 1980 (42 U.S.C.)
Section 9606(a)), as amended by)
the Superfund Amendments and Re-)
authorization Act of 1986, Pub. L.)
No. 99-499, 100 Stat. 1613 (1986).)

CONSENT AGREEMENT AND ORDER

The following Consent Agreement and Order ("Order") is issued pursuant to the authority vested in the President of the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") Pub.L. No. 99-499, and delegated to the Administrator of the Environmental Protection Agency ("EPA") by Executive Order No. 12580, 52 Fed. Reg. 19 (1987), and further delegated to the Regional

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Administrators of EPA. This Order pertains to property located on Delaware Street in Throop, Lackawanna County, Pennsylvania. The property will hereinafter be referred to as the "Site."

By this Order, Respondent agrees to conduct a comprehensive investigation of the Site and adjacent areas and to address immediate response measures, if any, required by applicable local, state and federal laws and regulations. This Order does not extend to any ultimate remedial measures at the Site or adjacent areas.

The Respondent agrees to undertake all actions required by the terms and conditions of the Order.

The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 C.F.R. § 300.65. Notice of the issuance of this Order has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

I. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

EPA has determined that all findings of fact necessary for the issuance of this Order pursuant to Section 106(a) of CERCLA have been made as described below:

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1. Gould Inc. ("Gould" or "Respondent") is a Delaware corporation registered to do business in Pennsylvania. The corporation headquarters of Gould is located at 10 Gould Center, Rolling Meadows, Illinois 60008.
2. The Site was the location of a battery crushing and lead processing facility operated by the Marjol Battery and Equipment Company ("Marjol") from 1968 to 1980. In May, 1980, the Respondent purchased the Site from Mr. Lawrence Fiegelman, former owner of the Marjol Battery Company. After a brief period of operation of the battery crushing and lead processing, the Respondent ceased operations at the facility in April, 1982.
3. Marjol and Gould utilized approximately 43 acres in connection with the operations at the Site. The Site contains a landfill in the southwest corner which contains an estimated 65,600 cubic yards of contaminated soil, broken battery casings and crushed drums. The southern end of the landfill is severely eroded. Piles of battery casings and lead originating from operations at the Site are evident throughout the length of an erosion gully which extends through the landfill and eventually drains into the Lackawanna River.

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4. Since 1982, the Respondent has attempted to clean up and stabilize various portions of the Site. The Respondent has voluntarily removed lead and acidic based sludge from a pre-treatment building, demolished two buildings and other structures that formerly housed battery crushing operations, and stabilized a portion of the landfill by covering exposed battery casings.

5. On June 5, 1987, EPA's Technical Assistance Team performed soil sampling at the Site. The results show highly elevated levels of lead onsite, in nearby residential properties and in stormwater channels leading to the Lackawanna River. A table summary of the most significant analytical results follows:

<u>Sample #</u>	<u>Location</u>	Lead Content
		<u>[Parts per Million]</u>
S03	452 Delaware Street	1530 ppm
S04	Drainage Area (Delaware & Hill Sts.)	4080 ppm
S05	825 Hill Street	4540 ppm
S15	801 Dossuth Street	1570 ppm
S17	Culvert behind 721 Dossuth St.	2010 ppm
S35	Drainage Ditch	2290 ppm
S36	Drainage Plain	3280 ppm

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S37	Drainage Ditch	2830 ppm
S38	Drainage Ditch	3880 ppm
S41	100' East of Delaware Street Gate	7810 ppm
S42	901 Franco Street	8850 ppm

6. The Site is located in a predominantly residential area with approximately 5500 people living within one mile of the Site. A number of residences are located along the eastern and southern boundaries of the Site. Significant levels of lead have been detected in the soil on four (4) residential streets adjacent to the Site. These include Delaware, Hill, Dossuth, and Franco Streets.

7. Lead and lead compounds are hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

8. Lead has toxic effects on human beings and tends to bioaccumulate in human tissue. Exposure to lead can occur through ingestion and/or inhalation. The symptoms of lead poisoning can include anemia, neural dysfunction and neural impairment.

9. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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10. The Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

11. The past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

12. The Respondent is a Responsible Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is therefore liable for carrying out the provisions of this Order.

II. DETERMINATION

Based on the Findings of Fact and Conclusion of Law set forth above, EPA has determined that:

13. An imminent and substantial endangerment to the public health, welfare, or the environment may be present as a result of the release or threat of release of hazardous substances from the Site.

14. The actions set forth below are necessary to protect public health, welfare, and the environment.

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III. PARTIES BOUND

15. This Order shall apply to and be binding upon the Respondent, its successors, and assigns. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibility under this Order.

In the event of any change in ownership or control of the Site, Respondent shall notify EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site prior to any agreement for transfer.

IV. WORK TO BE PERFORMED

16. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Respondent shall commence performance of the following measures within the time periods specified.

17. Within forty five (45) calendar days of the effective date of this Order, Respondent shall complete the following measures:

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a. Retain a qualified contractor to conduct the necessary clean up activities. Prior to the initiation of Site work, Respondent shall notify EPA in writing regarding the identity of the person or persons who will be primarily responsible for any contractor and/or subcontractor to be used in carrying out the terms of this Order. All individuals, contractors and/or subcontractors performing cleanup activities at the Site shall meet the necessary Occupational Safety and Health Administration ("OSHA") requirements as defined in 51 CFR § 1910.120. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor if EPA believes they are not qualified to perform the response work. In the event of a written disapproval by EPA, Respondent shall notify EPA within ten (10) days of the person, contractor or subcontractor who will replace the one whom EPA disapproved.

b. Obtain a Pennsylvania Hazardous Waste Generator Identification Number from the Commonwealth of Pennsylvania.

18. Within 45 calendar days of the effective date of this Order, the Respondent shall submit a Work Plan ("WP") to the EPA for immediate response measures to be implemented at the Site and shall include a schedule of operations for performance of the work. The WP shall be consistent with the National Contingency Plan and shall be approved by EPA according to the Docket No. III-88-26-DC

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provisions of paragraphs 19 and 22 below. The following are the minimum specific actions that are to be detailed in the WP:

- a. Submit to EPA for approval a Site Health and Safety Plan ("Safety Plan") to EPA for approval, which is sufficient to protect the health of workers and other personnel and public from the hazardous substances and work-related health and safety hazards during performance of the work specified herein.
- b. A plan to provide Site security and stabilization.
- c. A plan to address any contaminated soils and materials in nearby residential properties.
- d. A plan to address exposed battery casings and other known areas of highly contaminated materials and soils onsite.
- e. A plan to conduct sampling to determine the full extent and depth of contamination onsite and offsite and to complete a topographical survey of the Site and immediate surrounding areas. Results of such sampling and survey shall be mapped and provided to EPA.
- f. A schedule for implementation of the WP.

19. The EPA shall review the WP and notify the Respondent of its approval or disapproval of the WP. In the event of disapproval, the EPA shall specify the deficiencies in writing. The Respondent shall address the deficiencies identified by EPA and resubmit the WP to EPA within fourteen (14) business days

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of receipt of EPA disapproval. Approval by EPA of the subsequent WP submission shall be according to the provisions of Paragraph 22 hereof below.

20. Within seven (7) days of receipt from EPA of written approval of the WP, the Respondent shall begin implementation of the WP in accordance with the WP and the schedule therein, and shall further conduct and complete the actions required in the WP in accordance with the WP and schedule therein. Beginning 30 days subsequent to the date on which the WP is approved by EPA, the Respondent shall provide EPA with a progress report for each preceeding 30 day period. The progress report shall include, at a minimum: 1) a description of the actions that have been taken toward achieving compliance with the Order; 2) a description of all data anticipated and activities scheduled for the next month; and 3) a description of any problems encountered or anticipated.

21. Documents, including reports, sampling results and other correspondence to be submitted pursuant to this Order shall be sent certified or express mail to the EPA Project Officer, pursuant to Paragraph 35.

22. Any reports, plans, specifications, schedules, and attachments required by this Order are subject to EPA approval

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and shall be incorporated into this Order upon approval by EPA. In the event that EPA disapproves any required submission, EPA shall specify the deficiencies in writing. Within fourteen (14) business days of receipt of EPA disapproval, Respondent shall amend and submit to EPA a revised submission that responds to the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA retains the right to submit its own modifications to the Respondent for implementation. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments or non-compliance with EPA submitted modifications in the case of subsequent disapprovals in accordance with this paragraph shall be considered a failure to achieve the requirements of this Order. Determination of non-compliance shall be made by EPA and shall be consistent with the NCP and all applicable federal laws or regulations.

23. The Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Order within 5 business days of the effective date of such retention.

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24. Respondent shall provide to EPA upon request or as necessary, any and all information resulting from and/or pertaining to action taken by Respondent in compliance with this Order including, but not limited to, copies of all hazardous waste manifests (including copies of manifests signed by the generator and transporter upon loading and preparation to leave the Site, and copies of manifests signed upon receipt of the hazardous wastes by a licensed disposal facility), identities of treatment, storage and/or disposal facilities used, identities of transporters used, and identities of any contractors and subcontractors used. Nothing herein shall be interpreted as limiting the inspection authority of EPA under federal law.

25. Within forty five (45) calendar days of the completion of all of the actions required in the approved WP, Respondent shall submit a report to EPA detailing the actions taken, and notifying EPA of such completion. EPA shall inspect the Site for adequacy of Respondent's performance of such action. EPA shall notify Respondent, in writing, of any deficiencies and the actions required to correct these deficiencies at the Site. Such actions required shall be consistent with the NCP and all applicable federal laws or regulations. Respondent shall take the necessary corrective measures to address any deficiencies identified by EPA.

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26. Within thirty (30) days of receipt by the Respondent of EPA approval of actions completed pursuant to the WP, Respondent shall commence monthly inspections and maintenance of measures completed under the terms of the approved WP for continued performance of such measures according to their purpose and design.

27. On or before the tenth (10) day of each month following the month of the inspection required pursuant to this Order, the Respondent shall notify EPA, in writing, of the results of such inspections. The report shall include any deficiencies found during the inspection, measures taken to correct such deficiencies, and measures to be taken on any remaining deficiencies.

28. The Respondent shall continue monthly inspections and maintenance for two (2) years or until written notification by EPA that such inspections and maintenance are no longer necessary, whichever occurs first.

29. In the event that the Respondent fails or refuses to comply with the terms of this Order, as determined by EPA, EPA

may undertake such measures in lieu of the Respondent, and take any other measures which EPA determines necessary to protect public health, welfare or the environment and may subsequently seek reimbursement of its costs from Respondent. All such measures shall be consistent with the NCP and applicable federal laws and regulations.

V. ACCESS

30. Respondent shall permit EPA, its employees, agents, contractors, or other authorized persons to have access to the Site, as provided below, for any of the following reasons:

a. to enter and freely move about those portions of the Site where work has been or is being conducted by the Respondent pursuant to this Order, at all reasonable times, including, but not limited to, any time that work is being carried out pursuant to this Order, for the purpose of observing the implementation of activities undertaken in accordance with this Order;

b. to perform actions EPA determines are necessary under Paragraph 24;

c. to obtain representative and/or split samples for hazardous substances testing and evaluation;

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d. to perform any actions consistent with the NCP, should Respondent not perform such actions;

e. to review and/or copy documents relating to this Order.

These rights of access are in addition to, and not in substitution for, EPA's inspection authority under applicable law.

31. To the extent that property included in the sampling and removal area is owned or controlled by parties other than the Respondent, the Respondent will use all reasonable efforts to obtain access from those owners, including reasonable access for EPA and its representatives. In the event the Respondent cannot obtain such access, Respondent shall notify EPA as soon as practicable and EPA shall determine with Respondent the necessary steps to gain access or the steps to take in lieu of gaining access.

VI. QUALITY ASSURANCE

32. The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance
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Project Plans," December 1980, QAMS-005/86, while conducting all sample collection and analysis activities required by this Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. The Respondent shall submit to EPA all sample analysis results within five (5) business days of receipt of such results.

VII. FORCE MAJEURE

33. The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with the requirements of this Order. Said notification shall be made verbally as soon as possible but not later than forty-eight hours (48) after Respondent becomes aware of such delay or anticipated delay, and in writing not later than ten (10) calendar days after becoming aware of such delay. The written notification shall state: (1) the nature of the delay; (2) whether and the reason why the delay is beyond the control of the Respondent; (3) the action that will be taken to mitigate, prevent or minimize further delay; (4) the anticipated length of the delay; and (5) a timetable for the action to mitigate, prevent or minimize further delay. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

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Any delay that results from circumstances beyond the control of the Respondent, that cannot be overcome by due diligence, shall be a "force majeure" event and shall not be deemed to be a violation of the Respondent's obligations under this Order, nor shall it make the Respondent liable for penalties pursuant to this Order resulting from such a delay. To the extent a delay is caused by a force majeure event, the schedule affected by the delay shall be modified to accommodate the delay on an expedited basis. Increased costs of performance or changed economic circumstances shall not be considered a force majeure event.

Knowing failure of the Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and constitute a waiver of the Respondent's right to invoke the benefits of this section.

In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Order has been or will be caused by circumstances beyond the reasonable control of the Respondent, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section, Paragraph VIII, of this Order. The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been

overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid or minimize delay.

VIII. DISPUTE RESOLUTION

34. If the Respondent objects to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of such EPA notification or action. EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection from the Respondent to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent. If agreement cannot be reached on any issue within this fourteen day period, EPA and Respondent retain their respective rights to whatever remedies, if any, are otherwise available by law.

IX. DESIGNATED PROJECT COORDINATOR

35. On or before the effective date of this Order, EPA and Respondent shall each designate a Project Coordinator

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Each PC shall be responsible for overseeing the implementation of this Order. Communications between Respondent and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Coordinators. EPA and Respondent each has the right to change its respective PC. Such a change can be accomplished by notifying the other party in writing at least five (5) business days prior to the change. The EPA PC shall have the authority to halt, modify, conduct, or direct any tasks required by this Order or portions thereof or to take any response actions authorized by 42 U.S.C. § 9604 when conditions may present an immediate risk to public health or welfare or the environment. This authority also includes the authority to approve minor modifications to the Work Plan that may become necessary as the work progresses. The absence of the EPA PC from the area shall not be cause for the stoppage of work.

The EPA PC shall be:

William D. Steuteville, Environmental Scientist
United States Environmental Protection Agency, Region III
CERCLA Removal Enforcement Section (3HW14)
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-6678

The Respondent's PC shall be:

NEYER, TISEO AND HINDO, LTD
Project Manager: Daniel A. Daily
860 Springdale Avenue
Exton, PA 19341
(215) 524-2300

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cc: Gilarde Environmental Management
Project Coordinator: Paul Cacciamani
950 Main Street
Dickson City, PA 18519

cc: Michael Veysey, Esq.
Gould Inc.
10 Gould Center
Rolling Meadows, Ill 60008

X. STIPULATED PENALTIES

36. If the Respondent fails to perform any work or submit any reports as set forth in the WP, and in accordance with the schedule contained therein, Respondent shall pay into the Hazardous Substances Superfund, within 10 calendar days of demand by EPA, the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substances Superfund and shall be mailed to:

EPA - Superfund
P.O. Box 371003 M
Pittsburgh, PA 15251

Stipulated penalties shall accrue in the amount of \$500.00 the first week, 1,000.00 for the second week, and 1,500.00 for each week, or portion, thereafter. The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to them by reason of the Respondent's failure to comply with any of the requirements of this Order.

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XI. OTHER CLAIMS

37. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, corporation, or other entity not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

38. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

39. By consenting to the issuance of this Order, the Respondent waives any claim to reimbursement it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

XII. RESERVATION OF RIGHTS

40. Except as expressly provided in this Order, (1) each party reserves all rights and defenses it may have, and (2) nothing

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herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and imposition of statutory penalties. Nothing herein shall prevent Respondent from seeking any legal or equitable relief to which it may be entitled under applicable law.

41. As provided by this Order, EPA expressly reserves its right to disapprove of work performed by the Respondent and reserves its right to request that the Respondent perform response actions in addition to those required by this Order, if it determines that such actions are necessary. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606, or the NCP and to seek reimbursement for any costs incurred. EPA's actions shall be consistent with the NCP and any other applicable federal laws or regulations.

42. Nothing in this Order shall constitute an admission or denial by Respondent with regard to EPA's findings of fact and conclusions of law.

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XIII. OTHER APPLICABLE LAWS

43. All actions taken under this Order shall be accomplished in a manner which complies with the requirements of all applicable local, state, and federal laws and regulations.

XIV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

44. The effective date of this Order shall be the date on which it is signed by EPA. EPA shall provide the Respondent with immediate notice that the Order has been signed. This Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall become effective on the date on which such amendments are signed by EPA. Minor changes to the WPs or schedules may be made by mutual agreement of the EPA's and Respondent's PCs; any such changes shall be effective immediately and shall be confirmed in writing.

45. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or other writings submitted by Respondent may be construed as relieving Respondent of its obligation to obtain formal approval when required by this Order.

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XV. TERMINATION AND SATISFACTION

46. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that it has demonstrated, to the satisfaction of EPA, that it has complied with all of the terms of this Order.

47. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Order, to execute this Order, and to legally bind the Respondent to this Order.

IT IS SO AGREED AND ORDERED:

Date: 4/6/88

United States Environmental
Protection Agency

By: [Signature]

James M. Seif

Regional Administrator

EPA Region III

Date: 3/29/88

Gould Inc.

By: [Signature]

MICHAEL C. VEYSEY

Asst. Gen. Counsel

29 MARCH 1988

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